

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-591-GCM
(3:05-cr-294-GCM-1)

TIDO MAURICE THOMPSON,)
Petitioner,)
v.) **ORDER**
UNITED STATES OF AMERICA,)
Respondent.)

THIS MATTER is before the Court on Petitioner's Motion for Reconsideration of this Court's Order dated December 5, 2012, granting the Government's Motion to Dismiss and denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence filed under 28 U.S.C. § 2255 on the ground that it is an unauthorized, successive petition. See (Doc. No. 9).

Petitioner is represented by Leah Kane of the Federal Defenders Office. In the motion for reconsideration, counsel Kane states that she did not have the opportunity to conduct a Simmons review before the Court denied the Section 2255 Motion to Vacate and that counsel was not given the opportunity to file a supplemental brief on Petitioner's behalf.

The Court will deny the motion for reconsideration, as this Court simply does not have jurisdiction to address the Section 2255 motion to vacate. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (holding that the failure of petitioner to obtain authorization to file a "second or successive" petition deprived the district court of the jurisdiction to consider the second or successive petition "in the first place"). As the Court noted in its prior Order, Petitioner does have the right to seek authorization from the Fourth Circuit Court of Appeals to file a successive

petition.

As for the alternative theories of relief that Petitioner now wishes to bring, counsel, on Petitioner's behalf, may certainly file a new petition or motion seeking relief under these alternative theories, notwithstanding that the Section 2255 motion has been dismissed as an unauthorized, successive petition.

In sum, the Court denies Petitioner's motion for reconsideration.

IT IS, THEREFORE, ORDERED that

1. Respondent's Motion for Reconsideration, (Doc. No. 9), is **DENIED**.
2. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules

Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right). Petitioner has failed to make the required showing.

Signed: March 5, 2013



Graham C. Mullen
United States District Judge

